IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO.44 OF 2005

IN

SUMMARY SUIT NO.1174 OF 2004

Zulash Clearing and Shipping Agency. ...Plaintiff.

Versus

Motiwala & Sons. ...Defendant.

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Mr. B. I. Dalvi for the Plaintiff.

None for the Defendant.

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CORAM : DR. D.Y. CHANDRACHUD, J.

June 19, 2007.

P.C.:

The suit under Order 37 of the Code of Civil Procedure, 1908, is for the recovery of the Plaintiff's dues for stevedoring services rendered to the Defendant. A Cargo was imported by the Defendant's Constituent in six consignments and it has been averred that the Defendant agreed to pay to the Plaintiff all the stevedoring charges, agency charges and service tax leviable thereon at the rate of Rs.127/- per metric ton of imported cargo; Re.1/- per metric ton as agency charges and service

tax at the rate of 5%. Six bills were submitted by the Plaintiff for services rendered, in all aggregating to Rs.6,91,470/-. On 15th April 2003, the Plaintiff addressed a letter to the Defendant to confirm a debit balance of Rs.2,16,247/- as on 31st March 2003. The Plaintiff received a confirmation from the Defendant that an amount of Rs.51,470/- was outstanding as on 31st March 2002. The suit has been filed in order to recover an amount of Rs.50,750/- for the balance which according to the Plaintiff is due and payable.

The Defendant has been served with the writ of summons and has entered appearance. However, no reply has been filed to the writ of summons. Counsel appearing on behalf of the Plaintiff has tendered a compilation of the original documents upon which the claim in the suit has been duly established. The claim falls within the purview of Order 37. In any event, the Defendant having failed to advance any defence to the Summons for Judgment, the Plaintiff will be entitled to a decree. The suit shall accordingly stand decreed as prayed subject to the modification that the Plaintiff will be entitled to interest at the rate of 9% per annum from the date of the suit until

payment or realisation. The Summons for Judgment is accordingly made absolute.

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